

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY

&

THE HONOURABLE MRS. JUSTICE K.HEMA

MONDAY, THE 19TH NOVEMBER 2007 / 28TH KARTHIKA 1929

CRL.A.No. 1757 of 2004(B)

SC.480/2003 of ADDL. SESSIONS COURT (ADHOC), THALASSERY

APPELLANT: ACCUSED:

**KEEZHPADA UMMAR, S/O.ABDUL LATHEEF,
AGED 49 YEARS, COOLIE, MEL MURINGODI,
MANATHANA AMSOM, THALASSERY TALUK(IN JAIL)**

**BY ADV. SRI.C.P.PEETHAMBARAN
SMT.R.DYANA**

RESPONDENTS: STATE & COMPLAINANT:

**THE STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.**

**BY ADV. DIRECTOR GENERAL OF PROSECUTIONS(B/O)
BY PUBLIC PROSECUTOR SRI. NOBLE MATHEW**

**THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD
ON 19/11/2007, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

KSS

J.B.KOSHY & K.HEMA, JJ.

Crl.A.No.1757 OF 2004

Dated 19th November, 2007

JUDGMENT

Koshy,J.

This appeal is filed from the jail. Appellant was undergoing imprisonment continuously from 15.5.1996. He was sentenced to undergo imprisonment for life with a fine of Rs.3,000/= under Section 302 of the Indian Penal Code, to undergo rigorous imprisonment for 10 years with fine of Rs.1,500/= under section 392 IPC and also R.I. for seven years with a fine of Rs.500/= under Section 201 IPC. There was a direction to run the sentences concurrently. According to the prosecution, on 6.5.1996 at about 11.30 p.m. the accused with an intention of committing robbery of gold ornaments, committed murder by intentionally causing the death of one Abdul Wahid, son of Abdul Rahiman and destroyed the identity of Abdul Wahid by causing disfiguration on the face of the deceased by using fire at the kitchen of the house bearing No.2/146 of Peravoor Panchayat in Muringodi desom, Manathana amsom and thereby committed the offence punishable under Sections 302, 392 and 201 I.P.C.

2. PW1 gave Ext.P1 F.I.Statement on 10th May, 1996 stating that PW2 and another informed him that a foul smell was coming from

the unoccupied house of PW5 John and when they looked, after removing the roof tiles, they saw a person lying dead in the kitchen. Hearing that, he went there and found that the above fact is correct. He has not seen the incident. He only saw the dead body. He did not say anything regarding the accused or identification of the deceased. PW2 also stated the same thing. According to the prosecution and as per the evidence adduced in this case the deceased and accused got themselves acquainted while they were in jail. It is also stated by the prosecution that the deceased Abdul Wahid was accused in many illicit liquor and drugs trafficking cases and he was dealing in ganja. It was also stated by PW3 and other witnesses that the house where the dead body was found was unoccupied. The house belongs to PW5. Earlier it was given on rent to PW4 and thereafter it was given to the accused. But, no document is produced to show that it was given on rent to the accused. PW3 has stated that after the accused left the house one Prakasan was staying there. Even according to PWs 1 and 2 it was an unoccupied house. The prosecution relied on the signature and thumb impression in Ext.P6, abstract of application for admission in Parathode Service Co-operative Bank, Ext.P7, surety bond, Ext.P9 identity card issued by the Parathode Service Co-operative Bank and the thumb impression alleged to have taken from the amputated hand of the deceased (Ext.P17). Ext.P8 is the seizure mahazar as per which documents from the Co-operative Bank were

seized. PWs 14, 15 and 16 were examined to prove the seizure. But, PW14 stated that Ext.P7 is a document giving loan to one Abdul Salam and in Ext.P7 it is not stated that the loan was given to Abdul Vahid. He also stated that Ext.P7 contained a mistake. The loan was given to the son of Abdul Salam. Further, Ext.P6 is also a copy and not original. Ext.P6 also shows that admission register is in the name of son of Abdul Salam and Makkar and Moideen who are mentioned as nominees are stated as his brothers. The identity card, Ext.P9, shows that it is issued to Abdul Vahid, son of Abdul Salam. According to the prosecution, the deceased is Abdul Vahid, son of Abdul Rahiman and not Abdul Salam. Ext.P13 notice issued by the Special Branch Inspector is also to Abdul Vahid, son of Abdula Rahiman and, therefore, there is no indication that Exts.P6, P7 and P9 relate to the deceased. The prosecution examined PW17 Abdul Salam, son of Abdul Salam, brother of the deceased. He clearly stated that his brother, Abdul Vahid, was circumcised. Ext.D1 also shows that Abdul Vahid, son of Abdul Rahiman was circumcised, but, the doctor who conducted the postmortem examination stated that in the dead body on which he has conducted postmortem, the penis was not circumcised. PW32 Sub Inspector, who prepared Ext.P19 inquest report has also reported that the body in which inquest was conducted was not circumcised. PW17 has stated that the gold chain, rings and MO6 HMT watch belong to his brother. But, in cross

examination he stated that he identified the same because police stated so. Except MO6 HMT watch the gold chain and rings were not available in the court for showing and getting identified and we shall also subsequently discuss the genuineness of the alleged recovery. It is also pertinent to note that none of the relatives were shown the dead body so as to make any identification. The brother, wife and others stated that they have not seen the dead body and nobody has specifically identified the dead body. There is absolutely no evidence to show that the person who died was Abdul Vahid, son of Abdul Rahiman. Prosecution examined Abdul Salam brother as PW17 and his father's name is also Abdul Salam and not Abdul Rahiman. He was positive that his brother is not died and he has not married from Parathode. PW17 also stated during cross-examination that he identified the ornaments as that of his brother only because police stated to him that those ornaments belong to his brother. “Police കാർ വാഹിദിന്റെറയാണ് ആഭരണങ്ങൾ എന്നു പറഞ്ഞതു കൊണ്ടാണ് ഞാൻ മനസ്സിലാക്കിയത്.” Absolutely there is no evidence to show that the deceased was Abdul Vahid.

3. Assuming that the body found was that of Abdul Vahid, it was identified. Then also there is no evidence to connect the accused with the crime. The only evidence relied on by the

prosecution is the recovery of ornaments, MO6 watch, MO4 wooden plank and MO5 granite stone used in the commission of crime on the basis of the confession of the accused made on 16.5.1996. PW12 who was examined as mahazar witness for recovery of MOs 4 and 5 has stated that he saw the recovery on the date when dead body was in the house, i.e., on 11.5.1996. But, according to the police, the alleged confession of accused was made on 16th. Similarly, PW21 who was examined to prove the house search (Ext.P18) stated that dead body was seen on 10th May. On the next day police came and accused was arrested and he saw accused producing watch, gold chain and rings and he signed Ext.P18 mahazar. He has also identified MO6. Ornaments were not in the court. He also signed as a witness to the inquest report. He has very categorically stated that before removing the dead body the recovery was made. “ശവശരീരം നീക്കുന്നതിന് മുമ്പേ ആണ് പോലീസ് ആഭരണം എടുത്തത്.” Therefore, the story of the police that as per Ext.P18 they had taken the ornaments and other MOs relied on by them on the basis of the confession made by the accused on 15th is totally false and only on the basis of such record an accused cannot be convicted for offence under section 302 IPC. PW27 also deposed that MOs 4 and 5 were recovered before body was removed and accused was present at the time when body was removed. This shows that prosecution has made a false case and recoveries are not correct and on the basis of the alleged recoveries alone the accused

cannot be connected with the crime.

4. The only other evidence produced by the prosecution is that wife of the accused (PW24) deposed that she was living with her husband in Madappallykunnu. During that time accused was involved in a theft case for allegedly stealing gold chain of her elder sister. During the period of occurrence they were living in the house of Saidalavi. On 5th and 6th May, 1996 Vahid came to her house. When he came on 6th, accused had gone to Iritty. Later by noon accused came and they went together. On 7th early morning accused came. The doctor who conducted postmortem examination clearly stated that the death happened between 18 to 72 hours prior to the time of postmortem examination. Therefore, if that is accepted, death was only on 8th May. Even if the evidence of PW24 is accepted, accused and deceased came to her house on 6th and went together and the accused returned alone on 7th. It cannot be taken as the evidence of last seen theory as death occurred only on 8th. Further, she herself stated that her relationship with the husband was strained, she got a divorce and she was working in Gulf and came on leave. Therefore, we agree with the argument of the defence that police forced the strained wife to give such evidence against him. Her evidence is not inspiring confidence. There is absolutely no evidence to connect the accused with the crime. The chain of circumstances is not

complete to connect the involvement of accused with the crime. Suspicion however strong cannot replace conclusive proof required in a criminal case. We also note that the appellant was in jail for more than 11 years as he was apprehended on 15.05.1996 and was not released on bail.

5. In the result, we set aside the conviction and sentence passed against the accused and he is acquitted. He should be set free forthwith if he is not required in any other case.

The appeal is allowed.

J.B.KOSHY
JUDGE

K.HEMA
JUDGE

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